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International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Sixty-sixth year

Identical letters dated 20 May 2011 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I have the honour to transmit to you the attached letter dated 5 May 2011 that I have received from Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (see annex).

The letter contains two requests. The first relates to filling the position of President of the Tribunal. President Byron's term of office expires at the end of this month. The Statute of the Tribunal requires that the President be elected from among the permanent judges and be a member of one of the Trial Chambers. However, two permanent judges will resign and four will be redeployed to the Appeals Chamber in The Hague upon the completion of their remaining cases this year or early next year, leaving the Tribunal without any Arusha-based permanent judges. President Byron therefore requests amendments to the Statute of the Tribunal in order to allow the President to be a member of the Appeals Chamber and to be based in The Hague.

As an alternative, if it is decided that the President should continue to be a member of one of the Trial Chambers and to be based in Arusha, President Byron proposes that the Statute be amended to allow an ad litem judge to be eligible for election as President.

The second request is that President Byron be permitted to work part-time at the Tribunal and simultaneously to engage in another occupation from 1 September 2011. This is because President Byron has been appointed as President of the Caribbean Court of Justice and will be sworn in on 1 September 2011. He intends to resign from the Tribunal upon the delivery of the judgement in the *Karemera et al.* case around December 2011.

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As a result of President Byron's intended resignation from the Tribunal upon the completion of his remaining case, Judge Bakhtiyar Tuzmukhamedov will be redeployed to the Appeals Chamber instead of him.

It falls to the General Assembly and the Security Council to consider and decide on these requests. Accordingly, I would be grateful if you would bring the letter from President Byron to the attention of the members of the General Assembly and the members of the Security Council.

(*Signed*) **BAN** Ki-moon

Annex

Letter dated 5 May 2011 from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General

I would be grateful if you could bring these three urgent matters to the attention of the Security Council.

1. The Offices of President and Vice-President of the International Criminal Tribunal for Rwanda

I hereby request that the Security Council remove the requirement in article 13 (2) of the Statute that the President be a trial judge and the requirement pursuant to article 12 bis (3) with reference to article 13 bis (3) of the Statute of the International Criminal Tribunal for the Former Yugoslavia with reference to article 22 (2) of the Statute of the International Court of Justice that the President be resident at the seat of the Court to enable the President to be redeployed to the Appeals Chamber and reside in The Hague, if need be, and authorize and make provision for an ad litem judge to be elected Vice-President, to act as President in the absence of the President and, if required, to become President by election or otherwise.

Background

On 1 April 2011, the Tribunal held a plenary, which all permanent appeals and trial judges, except Judge de Silva, and most ad litem judges attended, at which it was discussed how to fill the managerial posts of the Tribunal in order to accomplish the Tribunal's completion strategy. I was authorized by all judges to request the assistance of the Office of Legal Affairs to obtain the approval and the necessary action of the Secretary-General and the Security Council with respect to what needs to be done for the Tribunal to fill its managerial posts after the expiry in May 2011 of my second term as President and of Judge Khan's second term as Vice-President.

Rationale

The discussion at the plenary was caused by the fact that by March 2012, all permanent judges, after completion of their judgements, will either have resigned (Judge De Silva and I) or be redeployed to the Appeals Chamber (Judges Khan, Sekule, Ramaroson and Tuzmukhamedov). It is expected that there will be trial activities until June 2012. The enclosure to this letter shows the residual tasks of the Tribunal for which provision is being made in the budget for service until the end of 2012.

The plenary was in agreement that the Tribunal's completion strategy requires that the Tribunal, at least until the completion of all trial activities, retain a President and a Vice-President who both must be resident in Arusha as required by the Statute with respect to the President, and that all appeals judges reside in The Hague. Furthermore, there was agreement that the Rules should not be amended to allow an extension of my term as President. To this end, no intervention of the Security Council will be required, as a permanent judge should be elected as the new President. During discussions, Judge Sekule agreed to consider whether to accept election as President, but underscored that he will not forgo his redeployment to the

Appeals Chamber after the delivery of the judgement in *Ngirabatware*, currently scheduled for March 2012. The Security Council could consider that it may facilitate the Tribunal in case the President to be elected is redeployed to the Appeals Chamber, if article 13 (2) of the Statute were amended to remove the provision that the President must be a trial judge and if article 13 bis (3) were modified to allow the President, after redeployment to the Appeals Chamber, to reside in The Hague.

With respect to the Vice-President, the majority of the permanent judges and all ad litem judges agreed that the unavailability of any permanent judges made it necessary that an experienced ad litem judge could be elected Vice-President and act as President during the absence of the President. Should the Security Council consider that it cannot provide for the President to be redeployed to the Appeals Chamber and reside in The Hague, we would request, as an alternate solution, that if for any reason the President/permanent judge ceased to be President and no other permanent judge was available to serve in Arusha, the ad litem judge/Vice-President could become President, by election or otherwise.

2. Part-time service of Judge Dennis Byron

Leave is requested for Judge Dennis Byron (myself) to demit office as a permanent judge of the Tribunal on the delivery of the judgement in the *Karemera et al.* case and to work on a part-time basis from 1 September 2011 until the date of that judgement while engaged in another judicial occupation.

Background

I have been at the Tribunal since June 2004, and have sat as a judge in the *Simba* case and as Presiding Judge in the *Rwamakuba*, *Nchamihigo*, *GAA*, *Kalimanzira*, *Muvunyi* (retrial) and *Karemera et al.* cases. In addition, I presided over the pretrial of several cases and performed many other judicial functions. Since May 2007, I have been President of the Tribunal, and I am due to conclude my tour of duty in that Office on 27 May 2011. At that time, my main remaining duty will be the delivery of the judgement in the *Karemera et al.* case. The case is very advanced. The evidence phase is completed; the closing arguments are scheduled for 22 August 2011 and judgement delivery for December 2011. This workplan takes into account my work on a part-time basis from September until judgement delivery.

The Caribbean Community Heads of Government appointed me to be the next President of the Caribbean Court of Justice and to succeed the current President when he retires later this year. The action plan is for me to be sworn in on 1 September 2011 and to work part-time at the Tribunal until I have completed my obligations to the Tribunal.

I would like to assure you of my commitment to the work of the Tribunal and the complete and honourable discharge of my obligations. This arrangement will not give rise to any conflict of interest and will not delay the judgement delivery in this case. I should point out, however, that we have prepared a very aggressive deliberation schedule as part of our determination to meet the completion strategy targets and reduce delay in the judicial process.

In these exceptional circumstances, and considering the importance of the timely completion of the *Karemera et al.* case, I request that the Security Council

authorize me to work part-time from September 2011 until the delivery of the judgement in the *Karemera et al.* case and to engage in another judicial occupation in my home region during that period.

3. Assignment of Judge Tuzmukhamedov to the Appeals Chamber

I would like to refer to my letter of 29 May 2009, in which I discussed the expansion of the Appeals Chamber and redeployment of trial judges. I now confirm that I have decided not to join the Appeals Chamber. After consultation with the permanent judges, I have decided to assign Judge Tuzmukhamedov (Russian Federation) to the Appeals Chamber upon the completion of his current cases.

Judge Tuzmukhamedov joined the Tribunal as a permanent judge in September 2009. Since then, he has been assigned to the *Bagaragaza*, *Ndahimana* and *Nzabonimana* cases. Judgement delivery in the last of these cases is scheduled for December 2011.

(*Signed*) Dennis **Byron**
President

Enclosure

Initial projections for the remaining caseload of the International Criminal Tribunal for Rwanda

Second half of 2011:

(i) Completion of three current trial cases (*Karemera*, *Nzabonimana* and *Ndahimana*)

(ii) Completion of Prosecution evidence preservation in *Bizimana* and *Mpiranya* and of any defence evidence preservation in *Kabuga*

(iii) Completion of referral applications concerning *Sikubwabo* and *Kayishema*

(iv) Pretrial proceedings in cases against fugitive accused arrested before 1 July 2011 and in *Uwinkindi*, if not referred

(v) Possible revocation proceedings in cases against *Bucyibaruta* and *Munyeshyaka*, referred to France in November 2007

(vi) Review of witness protection orders concerning 508 witnesses

First half of 2012:

(vii) Continuation into early 2012 of *Ngirabatware* and *Nizeyimana*

(viii) Preservation of defence evidence in *Bizimana* and *Mpiranya*

(ix) Three genocide trials, cf. (iv), if *Uwinkindi* is not referred

(x) Two more genocide trials, cf. (v), if revocation is decided

(xi) Three contempt/false testimony trials

(xii) Pretrial proceedings in cases of fugitive accused arrested after 30 June 2011

(xiii) Pretrial proceedings in a number of contempt/false testimony cases, where an indictment is confirmed before 1 July 2012

(xiv) Indictment amendment decisions in the cases of seven fugitives

(xv) Ongoing review of witness protection orders, cf. (vi)

Second half of 2012:

(xvi) Spillover of trials, cf. (ix)-(xi)

(xvii) A number of contempt/false testimony trials, cf. (xii)